



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16006536

Date: APR. 15, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a medical scientist in the field of dentistry, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that while the Petitioner established his eligibility as a member of the professions holding an advanced degree, the record did not establish that his proposed endeavor would be of national importance or that he was well positioned to advance that endeavor. For those reasons, the Director concluded that he had not established that a waiver of the job offer requirement per Section 203(b)(2)(B) of the Act would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

As acknowledged in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The record indicates that the Petitioner was previously employed as a professor at [REDACTED] University in [REDACTED] Brazil, teaching courses in dentistry. He also worked as a prosthodontist for a dental clinic in [REDACTED], and later became responsible for coordinating its prosthodontics department. For the reasons discussed below, we conclude that he has not established his eligibility for a national interest waiver under the *Dhanasar* framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner initially indicated that his proposed endeavor would involve "research dealing with understanding oral diseases to help improve overall human health, engaging in clinical investigations, and identifying any opportunities for business . . ." In his initial "professional plan and statement," he indicates that he plans to work with dental clinics in the United States, noting that he will help them to "improve their management, organization, and control practices related to oral healthcare and ensuring quality services." When summarizing, he states that he will "conduct dental research to improve practices and client satisfaction," as well as advise and train other dentists and improve the administration of dental clinics.

The Director issued a request for evidence (RFE) seeking further information regarding the Petitioner's eligibility, including the potential prospective impact of his proposed endeavor on the broader field of dentistry in the United States. The Petitioner's response indicated that he intends to "conduct dental research, perform surgery, provide dental care, and/or instruct field professionals," and that all of these would be performed concurrently. In an updated professional plan and statement, he indicated that his "main goal is to join an American university as a Researcher/Professor," but also to "participate in job creation by setting up a clinic" which he would run. The Petitioner also submitted copies of emails which acknowledge the receipt of his application for clinical professor positions by several universities in the United States.

In his decision, the Director found that the Petitioner's proposed endeavor has substantial merit. The record includes information about the importance of dental health and access to dental services for

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner submitted copies of his diploma and transcripts from the University [REDACTED] in Brazil, which indicate that he earned a Degree of Dental Surgery in 1994, a Master Degree in Dentistry in 1998, and a Doctor in Dentistry degree in 2004. The Director noted that according to the Electronic Database for Global Education (EDGE), published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), the Petitioner's Doctor in Dentistry degree represented attainment of a level of education comparable to a doctoral degree from an educational institution in the United States.

both overall personal health and to the United States economy. Upon review, we agree with this aspect of the Director's finding.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. Regarding the national importance of the proposed endeavor, the Petitioner stated in his RFE response that it "will produce significant national benefits, due to the ripple effects his work will have upon nationally important issues, such as the rising dental health crisis . . ." In addressing the national importance in the first prong of the framework, the *Dhanasar* decision sets out that the focus is on the specific endeavor being proposed. As such, we do not consider the broader implications of a particular field or industry in which an endeavor will be conducted, or the indirect consequences of a petitioner's activity. To the extent that the Petitioner's proposed endeavor involves the provision of dental services to patients, the management and administration of a dental clinic, and the teaching of dental students or other dentists, we agree with the Director's conclusion that the Petitioner has not established that the potential impact of this work would extend beyond his prospective patients, employees, or students to affect the field of dentistry more broadly.

Turning to the research aspect of the Petitioner's proposed endeavor, the Director noted that the record included reference letters discussing his previous research, as well as evidence that he had published papers in dental journals, that others had cited to those papers in their own published work, and that he had participated in conferences. The Director concluded that this evidence showed that the results of the Petitioner's proposed work as a researcher will be disseminated through professional journals, books, and conferences. However, the fact that the Petitioner has previously worked as a researcher and disseminated his results to potentially have a broader impact on the field of dentistry does not establish that his prospective endeavor has the same potential. As noted by the Director, the Petitioner states the following regarding his research in his RFE response:

Further, to clarify the request in the RFE, my work conducting research in the dental field is related to determining the best type of treatment, and techniques to use for my clients, especially when I am faced with complex cases. In order to properly succeed, and advance in the dental field, researching proper and new treatments is necessary.

He summarizes the potential impact of his proposed endeavor at the end of this professional plan and statement by reiterating that he will "Conduct dental research to improve practices and client satisfaction" and "Advise dental professionals about cutting-edge research findings." These statements indicate that rather than conducting original research for the purpose of disseminating knowledge of treatments and practices to the broader field of dentistry, the Petitioner proposes to review existing research for the benefit of his own prospective patients and employees. In addition, as opposed to the detailed evidence of his previous original research, the Petitioner has not provided any details about the nature of any original research he proposes to conduct, nor has he stated his intention to publish or present any potential research findings. We further note that the evidence provided regarding the clinical professor positions he has applied for does not include a description of the duties of these positions, and therefore does not show that they would include either clinical or laboratory research. While a request for a national interest waiver does not require evidence of a job offer, this evidence was submitted to show how the Petitioner intends to pursue his proposed endeavor, and it does not establish that these activities would have a broader impact on the field of dentistry.

For the reasons provided above, we disagree with the Director's conclusion regarding the national importance of the Petitioner's proposed endeavor, and conclude that the Petitioner has not established his eligibility under the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. As noted above, the Petitioner has not established that his proposed endeavor as a researcher, primary care provider, administrator, or educator in the field of dentistry will be of national importance. However, because the Director concluded in his decision that the research component of the Petitioner's proposed endeavor did meet the requirements of the first prong, we will analyze whether he is well positioned to pursue such research below.

The record includes evidence of the Petitioner's multiple degrees in the field of dentistry, as well as his publication and presentation of original research during his graduate studies and in the earlier part of his career. In addition, the Petitioner submitted evidence of courses he conducted in the classroom and laboratory settings.

Also submitted into the record are reference letters from the Petitioner's colleagues describing his activities as a researcher, educator, dentist, and administrator. Those which focus on the research aspects of his career include a letter from [REDACTED] of the [REDACTED] University of [REDACTED] in Brazil, who writes that he studied and collaborated with the Petitioner while the two were graduate students at the University [REDACTED]. He describes two papers by the Petitioner, published in the *Journal of the American Dental Association* and the *Brazilian Dental Journal*, as the Petitioner's "most distinguished achievements," but does not elaborate on the impact that they had on the broader field of dentistry.

As additional evidence related to his knowledge, skills, and record of any success in the area of his proposed endeavor, the Petitioner also submitted evidence that other researchers have cited to his published work. Although this evidence shows that the Petitioner has contributed original research in his field which has received some attention from other researchers, the record does not include evidence that shows that the quality or quantity of these citations reflects that his research has served as an impetus for progress in the field or otherwise generated substantial positive discourse in the broader medical science or dentistry communities. Further, as pointed out by the Director in his decision, this evidence indicates that the Petitioner has not been actively engaged in research in his field for several years prior to the filing of his petition. When taken as a whole, the recommendation letters, papers published in journals, presentations at conferences, and citation record do not establish that the Petitioner has a track record of success in conducting original dentistry research.

Another factor which may be considered under the second prong of the *Dhanasar* framework is a petitioner's model or plan for future activities. As noted in our discussion of the national importance of the Petitioner's proposed endeavor, the Petitioner has stated that he intends to pursue a position as a clinical professor at a university in the United States, and presented copies of emails from several institutions acknowledging his application for such positions. However, he does not provide any detail regarding specific research projects he hopes to pursue, nor does the evidence provided show that the

positions he has applied for include research duties by which he could potentially have a broader impact in his field.

Although the Petitioner has submitted evidence which establishes that he possesses the necessary education to pursue original research and has conducted research in his field in the past, we conclude that due to the lack of both a demonstrated record of success in dentistry research and a specific plan for moving it forward, he is not well positioned to advance his proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for such a waiver because of an urgent need for dental services in underserved areas. In addition, he asserts that his contributions would be of such value to the field of dentistry in the United States that he would benefit the United States despite the availability of qualified workers. However, as the Petitioner has not established that his proposed endeavor is of national importance or that he is well positioned to advance his proposed endeavor, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.